

CASS COUNTY JOINT WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
MAY 26, 2016
8:00 A.M.

The Cass County Joint Water Resource District met on May 26, 2016, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Mark Brodshaug and Dan Jacobson, Southeast Cass Water Resource District; Rodger Olson, Maple River Water Resource District; Ken Lougheed, North Cass Water Resource District; Jacob Gust, Rush River Water Resource District; Carol Harbeke Lewis, Secretary-Treasurer; Michelle Anderson, Administrative Assistant; Sean M. Fredricks, Chris McShane, Lukas Andrud, John Shockley and Rob Stefonowicz (by phone); Attorneys for the Board; Lee Beauvais, Kurt Lysne and Mike Opat, Engineers for the Board; Ty Smith, CH2M HILL Engineers, Inc.; Eric Dodds, Tanaya Reitz, Paul Breen and Joe Herbst, Advanced Engineering and Environmental Services, Inc. (AE2S); Brady Woodard, Moore Engineering, Inc.; Jason Benson, Cass County Engineer; Nathan Boerboom, City of Fargo Division Engineer-Metro Flood Diversion; Scott Stenger, ProSource Technologies, Inc.; and Terry Sauvageau, Horace resident.

Minutes

It was moved by Manager Gust, seconded by Manager Lougheed and unanimously carried to approve the minutes of the May 10, May 12 (4 sets) and May 18, 2016, meetings.

Agenda

It was moved by Manager Lougheed, seconded by Manager Olson and unanimously carried to approve the order of the agenda, as amended.

Metro Flood Diversion Project – access update

Chris McShane updated the Board on access issues. Discussion was held on obtaining access for surveys at the north end of the Metro Flood Diversion Project channel. Mr. McShane and Joe Herbst reviewed and explained assigning a land agent to simplify the *Right of Entry* and land acquisition process and to help keep the project on schedule. The new process would allow property owners to have their questions understood and answered in a timely manner. The process was used for the In Town Levees Project and personal one-on-one contact by land agents early in the process was thought to be very successful.

The Board asked consultants to ensure the land acquisition and negotiation policy remains clear and consistent and that it also continues to be friendly, fair and flexible.

It was moved by Manager Gust and seconded by Manager Loughheed to authorize AE2S to assign land agents to make contact with property owners to obtain *Rights of Entry* to properties along the north end of the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Mr. Herbst will coordinate with land agents and keep track of the assignments. Future letters sent out to property owners for access will be modified to include a land agent contact number where appropriate.

Brief discussion was held on parcels needed for access in Minnesota regarding the Metro Flood Diversion Project.

Metro Flood Diversion Project – project updates – construction management

Ty Smith updated the Board and explained consultants have separated construction management services by Task Order to the appropriate sponsor.

It was moved by Manager Olson and seconded by Manager Jacobson to approve and authorize Chairman Brodshaug to sign Task Order No. 3, Amendment 0, for CH2M HILL Engineers, Inc. in the amount of \$40,200 for services beginning May 28, 2016, and ending November 25, 2016, for construction management and construction oversight services regarding the Metro Flood Diversion Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project – relocation benefits

It was moved by Manager Olson and seconded by Manager Jacobson to approve the Relocation Payment for OIN #9204, as outlined in the letter dated May 23, 2016, regarding the In Town Levees Project. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project – land acquisition

It was moved by Manager Jacobson and seconded by Manager Gust to approve the following regarding the Oxbow-Hickson-Bakke Ring Levee Project:

- Adjusted Comparable Housing Differential amount set out in the *Replacement Housing Agreement* approved by the Board on April 14, 2016, for OIN #9593 and #9594; and
- Corrected offer of payment for replacement housing for OIN #9502.

Upon roll call vote, the motion carried unanimously.

Chris McShane stated letters and a copy of the *Resolution of Necessity and Offer to Purchase Permanent Right of Way Easement* were sent to property owners for acquisition of OIN #1096, #1097 and #230 with a deadline to accept the offer by May 25, 2016. Jonathon Garaas has responded on behalf of the property owner for OIN #230, but did not include a counteroffer. The owner of OIN #1096 responded by letter

and electronic communication and stated attempts to negotiate were not initiated. In the letter, the property owner stated a counteroffer was sent to David DuToit, the negotiator on behalf of Cass County Joint Water Resource District. Mr. McShane stated Mr. DuToit reported he did respond on May 25, 2016, to that property owner. Mr. McShane outlined the multiple communication and negotiation contacts with the three property owners. Over 40 different contact events occurred with the property owner for OIN #1096 in an attempt to negotiate and face-to-face conversations occurred with the property owner for OIN #230. The Board has knowledge of Mr. DuToit's contacts with Terry Sauvageau, due to his presence at previous meetings.

The Board requested Terry Sauvageau give a summary of his experience of the negotiation process. Mr. Sauvageau stated he was contacted several times by Mr. DuToit. Mr. Sauvageau stated he sent a counteroffer to Mr. DuToit based on his research of comparable sales in the area. Mr. McShane asked Mr. Sauvageau if Mr. DuToit responded to the counteroffer. Mr. Sauvageau stated he did receive a response from Mr. DuToit and the counteroffer is currently under review by the appraiser. Mr. Sauvageau stated he thought the Board would contact him directly to explain project details, the necessity for the property acquisition and to conduct negotiation. Mr. Sauvageau stated he is willing to work with the Board if the Board shows a good faith effort, but right now he is not happy with the negotiation process.

Manager Olson explained to Mr. Sauvageau the Board has found individual informational meetings with the property owner more successful because specific questions and requests can be addressed more easily. In a large setting with multiple property owners, questions are not often asked due to landowner confidentiality and property specifics. Manager Olson also stated the Board understands and shares the concern for potential tax ramifications to the property owner and that is the reason most Water Resource District projects like more time to negotiate and share project information with the property owner. Manager Olson explained, in this case, the Corps of Engineers made the decision based on its obligation to appropriate federal funding and due to the Board's agreement with the Diversion Authority to acquire land for the Metro Flood Diversion Project, it was necessary for the Board to proceed faster than normal.

Sean Fredricks stated because of the Corps of Engineers' construction schedule to start the diversion inlet structure in the fall of 2016 and the permit requirements set forth by the Office of the State Engineer, the timing to obtain the necessary property was out of the Board's control. Typically, the Board allows a year to obtain property necessary for Water Resource District projects. The Board was only recently notified of the Corps of Engineers' construction schedule, which was predicated upon the obligation of federal appropriations. Mr. Fredricks and Mr. McShane explained negotiations are not limited by filing with the court and the Board expects negotiations to be on-going in hopes of reaching a reasonable settlement with property owners.

Discussion was held on the negotiation policy and process to acquire land for the Metro Flood Diversion Project. Mr. Fredricks outlined the negotiation process used by the land acquisition team. Mr. McShane explained due to the magnitude of the project and the amount of property involved, it is important for property owners to communicate directly with the negotiator and the land acquisition team for negotiation and acquisition of property. Manager Gust agreed the negotiation process should be handled by the land acquisition team due to the large amount of land to be acquired for the project.

Manager Loughheed pointed out property purchased through voluntary land acquisitions were a business decision made by the property owner and those land acquisitions should not be compared to any other land acquisition. Every acquisition and property owner has their own specific situation and asked they keep that in mind when moving forward with the project.

The Board has authorized the land acquisition team to conduct negotiations, communicate with property owners and bring recommendations back to the board on acquisition of property for the Metro Flood Diversion Project. A response will be sent regarding the counteroffer for OIN #1096.

Mr. McShane updated the Board on the court process for acquisition of the property necessary for the diversion inlet structure. It was moved by Manager Olson and seconded by Manager Gust to authorize Cass County Joint Water Resource District's attorneys to file the Complaint on May 31, 2016, regarding the acquisition of OIN #1096, #1097 and #230, property necessary for the Metro Flood Diversion Project, through the eminent domain authorities under North Dakota law. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Olson and seconded by Manager Jacobson to authorize the Secretary-Treasurer to payoff special assessments on properties purchased for the Oxbow-Hickson-Bakke Ring Levee Project at the time the properties are taken off of the tax rolls. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project / Oxbow-Hickson-Bakke Ring Levee Project – property management

Paul Breen gave an update on property management and demolition activities for the In Town Levees Project. Asbestos testing is complete on several properties. The City of Fargo Fire Department conducted training on Mickelson property. Mr. Breen stated a proposal will be presented at the next meeting to move 10 houses within the City of Oxbow.

Metro Flood Diversion Project – project updates

Eric Dodds reported the Financial Plan for the Metro Flood Diversion Project was presented at the 6-Entity Diversion Authority informational meeting yesterday. Mr.

Dodds stated the Financial Plan includes a vote for the extension of the existing flood sales tax based on a 3% growth of sales tax. Special assessments will not be utilized at this time. Discussion was held on the 2% benefit for Minnesota and a future analysis of sales tax revenue from Minnesota residents.

Manager Olson suggested consultants continue to rely on business leaders to convey the message of the importance of flood protection through the Metro Flood Diversion Project for Fargo-Moorhead and surrounding communities. Mr. Dodds stated he is coordinating with the Fargo-Moorhead West Fargo Chamber of Commerce to prepare and communicate project details and updates to the public.

John Shockley stated the Corps of Engineers is interested in a Memorandum of Understanding to address land acquisition policy procedures within the federal acquisition process.

Discussion was held on the appraisal review process, negotiation procedures for land acquisition and using a standardized process. Scott Stenger outlined negotiations procedures and guidelines used by ProSource Technologies, Inc.

Mr. Fredricks stated Richland County Water Resource District declined to meet with the Cass County Joint Water Resource Board regarding the Metro Flood Diversion Project at this time.

It was moved by Manager Olson and seconded by Manager Gust to approve and authorize Chairman Brodshaug to sign Task Order No. 1, Amendment 8, for CH2M HILL Engineers, Inc. to extend the time for rendering services to November 25, 2016, and to increase the budget \$1,040,090 for a total of \$4,469,912, for land management services regarding the Metro Flood Diversion Project.

Discussion was held on recent information from the Office of the State Engineer on the permitting requirements for construction of the Metro Flood Diversion Project. Mr. Dodds suggested meeting with the State Water Commission to review new conditions and requirements.

Tanaya Reitz was given congratulations on her new career opportunity and thanked for her hard work as a consultant on the land acquisition team.

Metro Flood Diversion Project – Joint Powers Agreement

The *Resolution Approving Joint Powers Agreement* regarding the Metro Flood Diversion Project is attached hereto.

Mr. Shockley stated Buffalo-Red River Watershed District declined entering into the *Joint Powers Agreement*.

Maple River Dam

Kurt Lysne and Brady Woodard updated the Board on weed control, the annual cultural survey and inspection of the Maple River Dam. It was moved by Manager Jacobson and seconded by Manager Olson to hire Industrial Builders, Inc. to inspect the Maple River Dam principal spillway. Upon roll call vote, the motion carried unanimously.

Lake Bertha Flood Control Project No. 75

Mike Opat reviewed assessment calculations and reviewed the benefit analysis with the Board regarding Lake Bertha Flood Control Project No. 75. Mr. Fredricks stated easements are not needed for the project. Mr. Opat will reach out to Eldred Township officials and area residents to discuss the project. The operation plan was also discussed. A Resolution will be brought for consideration at a future meeting.

Bills

It was moved by Manager Jacobson and seconded by Manager Gust to approve the payment of Checks #12700 through #12703, and Checks #12720 through #12731, as presented. Upon roll call vote, the following Managers voted in favor: Brodshaug, Olson, Jacobson, Loughed and Gust. The Chairman declared the motion passed.

Adjournment

There being no further business for the Board to consider, it was moved by Manager Loughed, seconded by Manager Gust and unanimously carried to adjourn the meeting.

APPROVED:

Mark Brodshaug
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer